

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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ZIM INTEGRATED SHIPPING SERVICES, LTD.,

Plaintiff,

Case No. 07-civ-5861 (RMB)

- against -

BELCO RESOURCES, INC., SINOCHEN
JIANGSU CORPORATION (FORMERLY KNOWN
AS SINOCHEN JIANGSU IMPORT &
EXPORT CORPORATION), NANJING HUABIN
FOREIGN TRADE & ECONOMICS CO., LTD.,
DRAGONTRANS SHIPPING LTD. d/b/a
HUABANG INTERNATIONAL, INC.,
SINOTRANS NINGBO INTERNATIONAL
FORWARDING AGENCY CO., LTD.,
JOHN DOE 1-10,

Defendants.

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**DECLARATION BY CLARENCE
DUFFY IN SUPPORT OF
PLAINTIFF'S OPPOSITION TO
THE JOINT MOTIONS TO
DISMISS THE SECOND VERIFIED
AMENDED COMPLAINT AND TO
VACATE THE RULE B
ATTACHMENT OF DEFENDANTS
SINOCHEN JIANGSU
CORPORATION, NANJING
HUABIN FOREIGN TRADE &
ECONOMICS CO., LTD. AND
BELCO RESOURCES, INC.**

I, CLARENCE DUFFY, declare as follows:

1. I am a Hazardous Materials Coordinator for Zim American Integrated Services Limited (hereinafter "Zim American") located at 5801 Lake Wright Drive, Norfolk, Virginia.
2. I make this declaration in support of Plaintiff Zim Integrated Shipping Services, Ltd.'s ("Zim") opposition to the joint motions of the Defendants Sinochem Jiangsu Corporation, Nanjing Huabin Foreign Trade & Economics Co., Ltd. and Belco Resources, Inc. to dismiss the second verified complaint and to vacate the Rule B attachment in the above captioned matter.
3. I am a retired member of the United States Coast Guard with 22 years of service.
4. I was Senior Instructor in Hazardous Material and IMDG Code with the United States Coast Guard for five years.
5. I have been employed by Zim American for over two years and I am one of three Hazardous Materials Coordinators in the world working for Zim.

6. My current responsibilities as Hazardous Materials Coordinators for Zim American currently consists in approving the stowing and planning of dangerous goods cargoes aboard Zim's vessels, advising Zim's agents on the proper cleaning up of spills and leakages, counseling Zim about the interpretation of the Hazardous Materials regulations under 49 C.F.R. and the IMDG Code, proposing the upgrading of Zim's safety procedures in Hazardous Materials and implementing global policies about Hazardous Materials. I am also reporting to the Dangerous Goods Desk located in Haifa.

7. The International Maritime Organization (the "IMO"), which is affiliated with the United Nations, has developed a code, the International Maritime Dangerous Goods Code (the "IMDG Code"), to govern the carriage of dangerous goods aboard ships. There is an International Convention for the Safety of Life at Sea ("SOLAS") to which the United States and other member nations of the United Nations, such as China, Panama, Israel, Liberia and Belize, are signatories. The members of the IMO and the signatories of SOLAS convention have adopted the IMDG Code which is mandatory for all signatories of SOLAS since January 1, 2006. Today at least 150 countries whose combined merchant fleets account for more than 98% of the world's gross tonnage use the IMDG Code as a basis for regulating sea transport of hazardous materials.

8. The IMDG Code, codified in the United States under 49 C.F.R. in the United States, is the only regulation that applies for the transportation of hazardous materials for shipments in international waters.

9. Other U.S. regulations on hazardous materials enforced by other U.S. agencies such as the U.S. Environmental Protection Agency, or the U.S. Occupational Safety and Health Administration, do not apply for the transportation of hazardous materials for shipment by water.

10. Under the IMDG Code, dangerous goods are assigned one of the classes 1-9 according to the hazard or the most predominant of the hazards they present. They are also assigned a United Nations Number (UN No.) by the United Nations Committee of Experts on the Transport of Dangerous Goods. Each UN number corresponds to a listing in the Dangerous Goods Lists compiled under the IMDG Code which indicates the properties of the substance, its packing requirements, its stowage and segregation requirements, its labeling/markings requirements, its measurements requirements and other specific rules necessary to ensure the safe transportation of the substance.

11. Under the IMDG Code, Calcium Hypochlorite is listed under Class 5.1, which designates "substances which, while in themselves not necessarily combustible, may, generally by yielding oxygen, cause, or contribute to, the combustion of other material".

12. Under the IMDG Code, Calcium Hypochlorite may be designated either under UN no. 1748, UN no. 2208, or UN no. 2880. It may even be listed in some instances as oxidizing substances under UN no. 1479 (also under Class 5.1). Attached hereto as Exhibit A are true and accurate copies from the IMDG Code of the listings of Calcium Hypochlorite under the Dangerous Goods Lists and of an explanation of the structure of the Dangerous Goods List.

13. Under the IMDG Code, substances are known by their Proper Shipping Names which the shipper must declare to the carrier on a shipping document.

14. Under the IMDG Code, the Proper Shipping Names of Calcium Hypochlorite are either:

- a. "CALCIUM HYPOCHLORITE, DRY or CALCIUM HYPOCHLORITE MIXTURE, DRY" with more than 39% available chlorine (8.8% available oxygen) for UN No. 1748; or,
- b. "CALCIUM HYPOCHLORITE, HYDRATED or CALCIUM HYPOCHLORITE, HYDRATED MIXTURE" with not less than 5.5% but not more than 16% water for UN No. 2880; or,

- c. "CALCIUM HYPOCHLORITE MIXTURE, DRY" with more than 10% but not more than 39% available chlorine for UN No. 2208.

15. The shipper *cannot* declare under the IMDG Code a dangerous substance by any other name, including technical names, trade names, product names, shortcut names, or business names as a substitute for the Proper Shipping Names.

16. A shipper is prohibited from declaring Calcium Hypochlorite to a common carrier (shipowner) under its other technical names, trade names, product names, shortcut names, or business names such as "BK powder", "Bleaching Powder", "CCH" or "Chloride of Lime, HTH",.

17. "Calcium Chloride", "Hypochlorite Salt" or "Calcium(oxy) Chloride" are not Proper Shipping Names under the IMDG Code, and a shipper cannot use those names to notify a carrier of the presence of Calcium Hypochlorite inside a sealed container.

18. The Dangerous Goods Lists for Calcium Hypochlorite under UN No. 1748, 2880 and 2208 have the same identical specifications:

- a. Stowage and segregation: "Cargo transport units shall be ... stowed away from sources of heat. Packages ... shall be stowed so as to allow for adequate air circulation throughout the cargo."
- b. Properties and Observations: "Substances are liable to exothermic decomposition at elevated temperatures. This condition may lead to fire or explosion."
- c. Packing instructions: the code P002 refers to specific instructions concerning the inner and outer packaging of Calcium Hypochlorite. For instance, inner packaging in plastic may not contain more than 10 kg of Calcium Hypochlorite and must be sift proof. Drums may not contain more than 400 kgs of Calcium Hypochlorite.
- d. Special packing instructions: the code PP85 indicate that bags are not allowed to contain Calcium Hypochlorite.
- e. Placards/Marks/Signs.

19. Under the IMDG Code, the shipper who offers dangerous goods for transport *must* describe the dangerous goods on a transport document given to the carrier provided it contains all of the information required by the provisions of the IMDG Code. The "Dangerous

Goods Transport Document” must contain the following information for each dangerous substance offered for transport:

- a. The UN number preceded by the letters "UN";
- b. The Proper Shipping Name, including the technical name enclosed in parenthesis;
- c. The primary hazard class or, when assigned, the division of the goods;
- d. Subsidiary hazard class or division number(s) corresponding to the subsidiary risk label(s) required to be applied, when assigned;
- e. The packing group for the substance which may be preceded by "PG" (e.g. "PG II");
- f. The total quantity of hazardous materials covered by the description and must include an indication of the applicable unit of measurement;
- g. The number and type of packages must be indicated. The type of packages must be indicated by description of the package (for example, "12 drums");
- h. The type of packaging and destination marks;
- i. Technical and chemical group names may be entered in parentheses between the proper shipping name and hazard class.

20. The IMDG Code also requires that the person(s) responsible for the packing/loading of dangerous goods in a cargo transport unit must provide a signed "Container/Vehicle Packing Certificate" stating that the cargo in the unit has been properly packed and secured, and that all applicable transport requirements have been met. Such certificate, the form of which is specified in the IMDG Code, must state that:

- a. The container/vehicle was clean, dry and apparently fit to receive the goods;
- b. Packages which need to be segregated in accordance with applicable segregation requirements have not been packed together onto or in the container/vehicle;
- c. All packages have been externally inspected for damage, and only sound packages have been loaded;
- d. Drums have been stowed in an upright position, unless otherwise authorized by the competent authority, and all goods have been properly loaded and, where necessary, adequately braced with securing material to suit the mode of transport for the intended journey;

- e. Goods loaded in bulk have been evenly distributed within the container/vehicle;
- f. The container/vehicle and packages are properly marked, labeled and placarded, as appropriate; and
- g. A dangerous goods transport document has been received for each dangerous goods consignment loaded in the container/vehicle.

21. Other documents may be required by the carrier under the IMDG Code such as a Multimodal Dangerous Goods Form when the cargo will be carried by different successive ocean and land transporters.

22. Zim does not accept the transportation of cargoes of Calcium Hypochlorite aboard its vessels. This policy was implemented by Zim a few months after an explosion aboard the vessel DG HARMONY, on or about November 9, 1998, which was caused by containers of Calcium Hypochlorite. .

23. Zim prohibits its employees and agents to book Calcium Hypochlorite.

24. Zim applies the same policies and procedures concerning Hazardous Materials worldwide.

25. Once Zim's booking agent has been notified by a shipper of the dangerous substance of the cargo, in the very exhaustive and specific way provided under the IMDG Code, he contacts immediately Zim's Hazardous Materials Coordinator.

26. If the shipper does not declare the hazardous or dangerous substance in the specific form provided under the IMDG Code, the booking agent will not report to the Hazardous Materials Coordinator.

27. Zim does not request or require Certificate of Safe Transport of Chemical Goods for goods not identified as dangerous or hazardous.

I declare under penalty of perjury that the foregoing is true and correct.

Executed: // January , 2008
Norfolk, VA


CLARENCE DUFFY